IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

F.A.O.No. 462 of 1991

Achint Kumar ..Petitioner

Versus

Ajmer Singh and others ..Respondents

CORAM:- HON'BLE MR.JUSTICE H.S.BHALLA

Present:- None for the petitioner.

Mr. Ravinder Arora, Advocate
for respondent No.3.

H.S.BHALLA,J.

Feeling aggrieved against the award dated 1.12.1990 passed by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as "the Tribunal), vide which the claim petition filed by the claimant was dismissed, the appellant/claimant has filed this appeal praying for setting aside the award passed by the Tribunal.

It is unnecessary to burden my award with the facts of the case, inasmuch as, these have been, in detail, recapitulated by the learned Tribunal. However, the facts required to be noticed for the disposal of this appeal are that on 1.7.1988 at about 11.15 P.M., Raj Kumar son of Lajpat Rai Kunda, resident of Ludhiana, was driving motor cycle bearing registration No.PAV 2615 and was going to village Haridwar, while Anil Kumar son of Des Raj of Ludhiana was sitting on its rear seat. When the Motor cycle reached near Durvin Chowk, Ambala Cantt, a truck bearing registration No.UHQ-795 came from behind being driven in a rash and negligent manner and struck against the motor cycle as a result of which, Anil Kumar got fracture and suffered injuries in this accident, motor cycle also got damaged. It has been averred in the petition that the accident had

taken place due to rash and negligent driving of the truck driver. The injured was taken to the Civil Hospital, Ambala. Achint Kumar claimant has prayed that he spent Rs.10,000/- on account of the damage of the motor cycle in the aforesaid accident.

The claim petition has been contested by respondent No.3 by filing written statement denying most of the assertions made therein. It has been specifically pleaded in the written statement that no accident took place between the offending truck and the motor cycle, therefore, the respondent is not liable to pay any compensation. It has also been averred in the written statement that the truck in question was not insured with the Insurance Company at the time of the alleged accident. The amount of compensation claimed in the claim petition is excessive.

The learned Tribunal, after framing of issues and appreciating the ocular as well as documentary evidence produced by the parties on the record of the case, has dismissed the claim petition filed by the claimant.

I have heard the learned counsel appearing for the Insurance Company and have also gone through the record of the case carefully.

The primary grievance of the claimant-appellant, as set up in the claim petition, is that the learned tribunal has committed a grave error in observing that the claimant has not proved this aspect of the matter by producing oral as well as documentary evidence on record that he had incurred expenses on the repair of the motor cycle, although some bills were produced on the record showing that he had spent some amount on the repair of the motor cycle, but he failed to prove those bills for the reasons best known to him,therefore the claimant is not entitled to any compensation. In the light of the observations made above and the

evidence, if any, brought on record, the case of the claimant, as per the material brought on record, has to be examined minutely.

In order to substantiate his claim, claimant Achint Kumar himself stepped into the witness box as PW-3 and deposed that he is the owner of the motor cycle bearing registration No. PAV 2615. He purchased the same through bill Ex.P-3. He has deposed that entire motor cycle was damaged in the accident and he had spent Rs.9,000/- to Rs.10,000/- on its repair. He has further deposed that the motor cycle was insured with the Insurance Company. In support of his contention, the claimant has also examined Ranbir Singh, Constable, who stepped into the witness box as PW-4 and deposed that the motor cycle in question was almost got damaged in the accident. The claimant has further stated that since he has not filed any claim with the Insurance Company with which the motor cycle was insured, therefore, he is entitled to compensation of Rs.10,000/-.

After going through the award, I am of the considered view that the claimant, in order to prove this aspect of the matter that he had spent Rs.10,000/- on the repair of the motor cycle, has not brought on the record any oral or documentary evidence on the basis of which it could be established that the claimant had, in fact, incurred expenses on the repair of the motor cycle. In the absence of any cogent material available on the record, it cannot be inferred from any angle, whether any such amount, which the claimant has claimed, was incurred by him on the repair of the motor cycle. The learned tribunal, has rightly observed that the claimant has miserably failed to establish on record that he had spent any amount on the repair of the motor-cycle, which had met with an accident with the offending truck. In the facts and circumstances of the case, to my mind, the finding recorded by the learned tribunal on this point does not call for any interference and the same is hereby affirmed.

For the reasons mentioned above, the appeal filed by the appellant fails and is hereby dismissed.

9.8.2006 (H.S.BHALLA)
VK JUDGE